

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 05-80137

CEDRIC SIMPSON,

HONORABLE AVERN COHN

Defendant.

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ORDER DISMISSING INDICTMENT WITHOUT PREJUDICE

I.

This is a criminal case. On December 10, 2007, the case was remanded to the district court for dismissal of the indictment on the grounds that the Speedy Trial Act had been violated. United States v. Simpson, No. 06-2621. Earlier, the defendant had been convicted on four (4) counts of Felon In Possession Of A Firearm, 18 U.S.C. §927(g)(1); two (2) counts of Possession Of An Unregistered Firearm, 26 U.S.C. §5681(d) and one (1) count of Felon In Possession Of Ammunition, 18 USC §922(g)(1), and sentenced to a custody term of 63 months, 20 months of which were served before the remand.

Now before the Court is the government's Motion To Dismiss Without Prejudice. Defendant asks that the dismissal be with prejudice. For the reasons that follow, the indictment will be dismissed without prejudice.

II.

The pros and cons of a dismissal without prejudice are set forth in the government's brief in support of its motion, and the defendant's brief in opposition. In the circumstance of this case, the Court is satisfied that applying the factors set forth in 18 U.S.C. §3162(a)(2),¹ the indictment should be dismissed without prejudice.

III.

The offenses charged are serious. The facts and circumstances which led to dismissal were occasioned by a misunderstanding by the government's attorney, which the Court adopted, of the date on which the Speedy Trial Act clock began to run. There is no evidence of any bad faith or that this is a pattern of conduct in the part of the government. The actual delay, as explained in the government's brief, was only two days past the 70 day period. The delays after that time were all excluded. Moreover, defendant was not prejudiced by the delay. The Court is satisfied that impact of a re-prosecution on the administration of the Speedy Trial Act and on the circumstances of justice are such that the government should have the right to retry the defendant if it so chooses. This disposition would best serve the ends of justice given the seriousness of the charges and the impact on the administration of justice if the defendant's alleged actions are not subject to judicial review.

¹This section provides in relevant part:

. . . In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice.

IV.

Accordingly, for the reasons stated above, the indictment is DISMISSED
WITHOUT PREJUDICE.

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: April 16, 2008

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, April 16, 2008, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160